

STATEMENT OF NIDA DONAR
AGAINST SENATE BILLS 1115, 1116, 1117 AND 1118

My name is Nida Donar. I have been an advocate for the elderly and vulnerable adults in Michigan for over 30 years. I am the past Executive Director of Citizens for Better Care, one of the country's oldest nursing home resident advocacy groups.

I am here today to speak in opposition to Senate Bills 1115, 1116, 1117 and 1118. In my opinion, as an advocate for the elderly and, in particular, those persons who rely upon care provided in nursing homes, assisted living facilities and adult foster care, I believe that these bills will contribute to a deterioration of the care provided to our most vulnerable citizens.

Over the 30 years that I have worked on behalf of this segment of our population, I have borne witness to horrible

events in nursing homes. I am aware of situations where people have lost legs and other body parts as a result of horrible wounds. I am aware of individuals who have died as a result of horrible wounds that have developed in facilities and not been treated properly.

I am aware of cases of individuals choking to death as a result of the illegal use of restraints and grossly improper decisions about what they can eat or not eat.

I am aware of situations where nursing home residents have been raped, beaten and abused.

I believe that the series of bills now before this Committee, Senate Bills 1115, 1116, 1117 and 1118, will make it difficult for vulnerable adults to seek justice in the civil

justice system and, as a result, care will suffer.

The overwhelming amount of care for individuals in long-term care settings including nursing homes, group homes and homes for the aged is performed by unlicensed personnel, many of whom have limited education and experience.

Many times injuries occur in nursing homes as a result of a failure on the part of unlicensed personnel to follow clear orders prepared by nurses. These are not issues that require expert witness testimony. When these instances occur, they are due to lack of common sense.

Suggesting that unlicensed personnel with minimal training and education will be signing "Affidavits of Merit" borders on absurd.

This will add an additional layer of cost to any case that is brought by the plaintiff. It will also add a tremendous amount of unnecessary cost to the defense of any such case.

Eight years ago in *Bryant v. Oakpointe Villa*,¹ the Michigan Supreme Court led by then Chief Justice Taylor held that the question of whether an incident was malpractice or ordinarily negligence depended on whether or not it arose out of the exercise of medical judgment or skill. There would be no reason for this body to tamper with what is a clear judicial guideline in this area.

Senate Bill 1117 also would suggest that just because a claim occurs within the four walls of a nursing home that that

¹ 471 Mich 411, 684 NW2d 864 (2004)

would make it a malpractice claim. This is expressly contrary to the decision of Justice Maura Corrigan in *Cox v. Board of Hospital Managers for City of Flint*.² Justice Corrigan specifically held that neither a hospital nor a unit within a hospital can commit malpractice. She specifically wrote that a case must be defined by who the actor is.

We cannot make experts out of non-experts. We cannot hold aides to the standard of care of a nurse. It is simply wrong, unnecessary and, in my opinion, will substantially threaten the quality of care in long-term care.

In our medical system when an individual is injured, most of the time the medical bills are paid for by Medicare or health

² 467 Mich 1, 651 NW2d 356 (2002).

insurers. These entities are the first ones to seek reimbursement of the monies that they have expended. In the case of Medicare, the recipients of the reimbursement are the taxpayers.

Any bill or legislation that deters the pursuit of legitimate claims for compensation is a direct affront to the Citizens of Michigan as taxpayers. Since when do we ask the public sector to pay for the cost of private sector wrongdoing? Again, this is simply wrong.

I am also appalled by the contents of Senate Bill 1116 which would essentially excuse negligent conduct of a licensed health care professional on the basis of a claim that he or she exercised good faith judgment. The decisions a physician makes

about the care of a resident in a nursing home, which is already minimal in nature, is based on the standard of care. The standard of care is based upon what a reasonably prudent physician would do or not do under certain circumstances. The standard of care is based in many instances on clinical practice guidelines or evidence-based medicine. Individual judgments not having a basis in scientific medicine can never be permitted to serve as a defense to misconduct or malpractice.

Overall, I believe that Senate Bills, 1115, 1116, 1117 and 1118 threaten the safety and well being of vulnerable adults in Michigan.

I would suggest that you speak to the families of individuals in long-term care which may include family and

friends and ask them if they want their loved ones placed at greater risk. The answer would be "no" which should also be your vote on these unnecessary and unwarranted bills.